IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1500 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PANDURANG DAGDU GAYAKWAD & 1 - Appellant(s)
Versus
PRABHAKAR DEVAJI MORA & 2 - Defendant(s)

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Appearance :
MS RUPA RANE for MR SN SHELAT for Appellant(s) : 1 - 2.
MR PV NANAVATI for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 11/09/2006

ORAL JUDGMENT

1. Original claimants have approached this Court by way of this First Appeal to challenge judgment and award of the Accident Claims Tribunal

No. 1, Surat dated 4th April, 1979 passed in Motor Accident Claim Petition No. 57 of 1978 since the said petition has been dismissed on the ground that there was no negligence on the part of the driver of the offending vehicle in which the deceased was travelling.

2. The appellants are the parents of deceased Vaman Pandurang, who was working as Cleaner of Truck bearing Registration No. GTC-5912, which at the relevant time was driven by respondent no. 1. The said vehicle was owned by respondent no. 2 and it was insured with respondent no. 3. The accident took place on 14th May, 1977. On that day the deceased was sitting in the truck to go to Ankleshwar to bring the bricks. It was being driver by respondent no. 1. According to the appellants, the vehicle was being driver with excessive speed and to avoid collision with a truck coming from the opposite direction, respondent no. 1 took a sudden and sharp turn on the left hand side and also applied brakes. As a result of this, the deceased was thrown out of the vehicle since the door of the cabin got opened. The legs of the deceased hanged against the RCC pillars with steel bars and he sustained serious injuries. He was immediately removed to hospital but during treatment he expired. Thus, according to the appellants, the death was only on account of the rash and negligent driving of respondent no. 1.

2.1. According to the appellants, the deceased was 22 years old and he was drawing salary of Rs.300/- p.m. On the basis of the same, compensation of the amount of Rs.30,000/= was claimed.

2.2. Respondents no. 2 and 3 contested the petition by filing written

statement at Exh. 8. They denied the averments made in the petition and stated that the deceased died on account of his own negligence and, therefore, the appellants were not entitled to receive any compensation. It was averred in the written statement that at the time of travelling in the truck deceased kept both his legs outside the cabin and in such position they hanged against the RCC pillars

2.3. The Tribunal, on appreciation of the evidence that was led before it, came to the conclusion that the deceased died on account of his own negligence since he received injuries because of the fact that he had kept his legs hanging outside the cabin and in that position they hanged against the RCC pillar. The Tribunal has, therefore, not considered the question of quantum of compensation, which otherwise could have been awarded to the appellants.

3. In the appeal before this Court Ms. Rupa Rane, the learned advocate appearing for the appellants has contended that the Tribunal has erred in holding that there was negligence on the part of the deceased and on that ground rejecting the claim petition. She has further submitted that the material on record clearly shows that it was only because of the rash and negligent driving of respondent, the deceased was thrown out of the vehicle and his legs were injured seriously. She has further submitted that the Tribunal while holding respondent no. 2 vicariously liable for negligence of respondent no. 1, ought to have saddled the insurance company – respondent no. 3 with liability to pay compensation to the appellants. She has also submitted that the amount claimed in the proceedings is just and proper and the Tribunal ought to have

awarded the entire amount. Ms. Rane has also submitted that even when the Tribunal was of the opinion that there was negligence on the part of the deceased, it could have entertained the claim petition keeping in view the provision of section 110 [aa] of the Motor Vehicles Act, 1939, which is corresponding to section 167 of the Motor Vehicles Act, 1984 and could have awarded compensation under Workmen's Compensation Act, 1923.

3.1. As against that, Mr VP Nanavati, learned advocate appearing for respondent no. 3 has supported the judgment of the Tribunal. He has submitted that the evidence on record clearly showed that the deceased was himself negligent and, therefore, no negligence could be attributed to the driver i.e., respondent no. 1. He has further submitted that even if the appellants succeed in establishing the negligence of respondent no. 1, considering the terms of the policy and also its statutory liability, respondent no. 3 will be required to cover the risk only to the extent of liability arising under the Workmen's Compensation Act.

4. I have perused the record and proceedings of the case. In the evidence of Prakash Tarachand Thakore, who travelled in the same truck. He was in the rear portion of the truck where the goods are being loaded and not in the cabin along with the deceased. He has stated that at the relevant time respondent no. 1 drove the vehicle at a speed of 50 to 60 Kms per hour with its head lights on. He has further stated that another vehicle came from the opposite direction with full light and that dazed respondent no. 1. He, therefore, all of a sudden took a turn to avoid collision. As a result of the same, the left side bumper of the truck got struck against the pillars and the deceased

was thrown out. He fell on the culvert. He has further stated that the truck travelled a distance of about 75 feet after the deceased was thrown out of the truck. When the witness got down, he saw that both the legs of the deceased were badly injured. He has further stated that because of the impact, the pillar had broken. However, the Tribunal has not believed this story and it has accepted the version put forth by the insurance company to hold the deceased negligent.

4.1. It may be stated here that neither the insured nor insurance company has led any oral evidence to prove the negligence of the deceased. The driver i.e., respondent no. 1 could have been the best witness to throw light on this aspect. He was party to the present proceedings. However, respondents have chosen not to examine him. When this is the position, in my opinion, the Tribunal's finding with regard to negligence of the deceased becomes doubtful. Even otherwise also it is difficult to believe that a person sitting in a truck, inside the cabin would hang his legs outside the body of the truck by keeping the door open and as a result of which the legs would get injured by banging against the pillar. The driver of the vehicle would himself not permit any co-passenger or the Cleaner to travel in this manner. However, there is also another interesting facet of this case, which I will presently deal with and hence I do not give any definite finding on the issue of negligence.

4.2. Apart from the controversy on the issue of negligence, it is an admitted fact that the deceased was working as a Cleaner. It is also not in dispute that respondent no. 1 – driver was also an employee of respondent no. 2. Both respondent no. 1 as well as the deceased were travelling in the

offending vehicle in the course of their duty or employment. They were going to Ankleshwar to bring bricks. On way the accident occurred wherein the deceased received fatal injuries. In view of the same, liability of respondent no. 2 would certainly arise under the Workmen's Compensation Act. If that be so, provisions of section 110 [aa] of the old Act [Section 167 of the Act of 1984] would entitle the appellants to choose the forum and they could have as well approached the authority created under the Workmen's Compensation Act, namely, the Commissioner. But at the same time petition under the provisions of the Motor Vehicles Act could also be filed instead of proceedings under Workmen's Compensation Act and that has been done in the present case. The question, therefore is whether irrespective of negligence of the deceased, the appellants could have been entitled to receive the compensation. The provisions of the Motor Vehicles Act require the insurance company to cover the risk of driver and the cleaner of a motor vehicle and its liability would be to the extent of compensation as awardable under the provisions of the Workmen's Compensation Act, unless by charging additional premium larger coverage is given. The liability arising under the Workmen's Compensation Act would be irrespective of the negligence of the deceased. In the present case, office copy of the policy is produced on record at Exh. 20. It shows that Rs.2014-50 was paid to cover risk of driver, cleaner and 7 coolies. The liability appears to be limited that is to the extent required to be covered under the Workmen's Compensation Act. In the instant case, therefore, respondent no. 3 is required to discharge its liability as arisen under the Workmen's Compensation Act since the insured is liable to pay compensation under the Workmen's Compensation Act, because the deceased has died in the course of discharge of his duty. As stated above, the appellants have claimed Rs.30,000/= on the basis of the fact

that the deceased used to earn Rs.300/- per month and he used to divert Rs.200/- for the maintenance of the appellants. However, he was unmarried. Hence, even if the entire claim was allowed only 1/3rd of it could have been awarded to the appellants they being the parent of the deceased, who was unmarried. As against that, the liability of respondent no. 2 i.e., the owner of the vehicle i.e., the employer of the deceased would come to Rs.26,565/= which is worked out on the basis of section 4 read with schedule 4 taking the factor relevant for 22 years of age. Therefore, even if I proceed on the basis of negligence of the deceased, as held by the Tribunal, the amount under Workmen's Compensation Act would safely be awarded to the appellants. The Tribunal has totally lost sight of this fact and also the provisions of section 110 [aa] of the old Act. The interest awardable is 6% p.a. In view of the aforesaid, this appeal is allowed. Respondents no. 2 and 3 are directed jointly and severally to pay a sum of Rs.26,565/- together with running interest at the rate of 6% p a from the date of application till realization with proportionate cost to the appellants. The office is directed to draw the decree accordingly.

R & P to be retransmitted to the Tribunal forthwith.

[Akshay H Mehta, J.]

* Pansala.